IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY FIFTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 1906 of 2004

Between:

1 The Chief Postmaster General (PLI), Andhra Circle, Dak Sadan, Abids, Hyderabad
2 The Superintendent of Post Offices, Eluru Division, West Godavari District
3 The Branch Postmaster, Munduru (V) Pedavegi Mandal, West Godavari Dsitrict

..... PETITIONER(S)

AND

Tippabothla Leelavathi W/o Ramakrishna
R/o Munduru (V), Pedavegi Mandal, West Godavari District

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ order or direction more particularly one in the nature of Writ of Certiorari call for the records with regard to the order in FA No. 64/2000 dt 10-9-2003 on the file of the State Consumer Disputes Redressal Commission, Hyderabad and quash the same as illegal arbitrary and an error apparent on the face of the record and also being violative of law, rules, regulations governing the Rural Postal Life Insurance policy and being violative of Principle of Law of Insurance Contract

Counsel for the Petitioner:MR.V.VINOD KUMAR

Counsel for the Respondent: MR.SOMANCHI VENKATESWARLU

The Court made the following :

The Hon'ble Sri Justice B. Sudershan Reddy

a n d

The Hon'ble Sri Justice K.C. Bhanu

WRIT PETITION No. 1906 OF 2004

O R D E R: (per Sri Justice K.C. Bhanu)

This writ petition is filed under Article 226 of the Constitution of India to issue a writ order or direction more particularly one in the nature of writ of Certiorari calling for records with regard to FA No. 64/2000 dated 10.9.2003 on the file of the State Consumer Disputes Redressal Commission, Hyderabad and to quash the same as illegal and arbitrary and error apparent on the face of the record.

The brief averments of the writ petition as stated in the accompanying writ affidavit are as follows:

The daughter of the respondent by name Varalakshmi obtained a Rural Postal Life Insurance Policy from the 3rd petitioner herein for a sum of Rs.20,000/- on 29.3.1996 nominating her mother i.e. the respondent herein as her nominee. The premium was paid till April 1997. The said Varalakshmi died on 2.5.1997. Thereafter the respondent approached the 3rd petitioner for payment of policy amount but the same was rejected on the ground that there was inconsistency in the cause of death. Therefore the respondent raised a consumer dispute before the District Forum, Eluru where under the Forum directed the petitioners herein to pay full value of the policy amount along with interest and awarded compensation of Rs.2,000/- towards mental agony and costs of Rs.500/-. Against the said order, an appeal in F.A. 64 of 2000 was preferred before the State Consumer Disputes Redressal Commission which was rejected by

the Commission but the order of the District Forum was modified to the extent that the petitioners-opposite parties need not pay the compensation of Rs.2,000/-. It is stated that the orders of both the Forum and the Commission are against the rules and regulations governing the Rural Postal Life Insurance Policy. It is also stated that the State Commission accepted the contention of the petitioners vide order in F.A. 112/2000 which was delivered on the same day on which the order in F.A. 64 of 2000 was delivered and 35% of the sum assured was ordered to be paid as per the circular issued by the Chief Post Master General. Aggrieved by this error on the face of the record, the petitioners filed review application but the same was dismissed. Hence they filed the present writ petition.

Learned counsel for the petitioners contended that as per the circular instructions issued by the Chief Post Master General dated 6.12.1996 the nominee is entitled for 60% of the sum assured if the death occurs after one year and before two years from the date of acceptance of the proposal but in this case both the District Forum and the State Commission directed the petitioners herein to pay the entire amount of Rs.20,000/- with interest thereon at 12% per annum which is contrary to the circular instructions. Therefore, he prays to quash the same.

On the other hand, learned counsel for the respondent contended that the so-called circular instructions dated 6.12.1996 have no application as the daughter of the respondent obtained the policy on 29.3.1996 and therefore the District Forum as well as the State Commission have rightly allowed the full claim under the policy dated 29.3.1996 and hence there are no grounds to interfere with the orders of the District Forum as confirmed by the State Commission.

It is well settled that while exercising the power of judicial review the court is more concerned with the decision making process than the merits of the decision itself. If there is any error manifest or apparent on the face of the proceedings such as when it is based on clear misreading or utter disregard to the provisions of law and a

grave injustice or gross failure of justice has occasioned thereby, this court can exercise its jurisdiction under Article 226 of the Constitution of India.

The factual matrix of the case is not in dispute. The daughter of the respondent by name Varalakshmi obtained Rural Postal Life Insurance Policy from the 3rd petitioner herein for a sum of Rs.20,000/- on 29.3.1996. The respondent herein was nominated as a nominee by her daughter. It is also not in dispute that the premium in respect of the said policy was paid till April 1997. It is also not in dispute that the insured Varalakshmi died on 2.5.1997. When the respondent approached the 3rd petitioner for payment of policy amount, the same was rejected on the ground that there was inconsistency in the cause of death. The respondent herein approached the District Consumer Forum which directed the petitioners to pay the full value of the policy along with interest and also awarded compensation of Rs.2,000/- towards mental agony and costs of Rs.500/-. Insofar as directing the petitioners to pay full value of the policy amount and interest, the same was confirmed by the State Commission. A plea has been taken by the petitioners herein that the claim of the respondent was rejected on account of suppression of true facts. A finding has been given by the District Consumer Forum that at the time of obtaining Ex.B-1 proposal the insured was free from any ailment. That finding of fact is not shown to be perverse or contrary to the evidence on record. The plea of the petitioners is that as per the relevant provisions of the Rural Postal Life Insurance Policy, in case the death takes place within two years and after one year from the commencement of risk the insured is entitled for 60% of the policy amount. The State Consumer Redressal Commission held that the petitioners have not quoted any Rule to the effect that the claim of the respondent herein was prematured as the insured has died within a period of three years.

In support of the contention of the petitioners that conflicting order dated 10.9.2003 was passed by the State Commission in F.A. 112 of 2000 against C.D. 139 of 1998 on the file

of District Forum, Srikakulam, they have filed Circular Order dated 6.12.1996 issued by the Chief Post Master General. As per Clause (iii)(a) of the said Circular, the claimant is entitled to only 35% of the sum assured along with the accrued bonus in case the death of the insured person occurs before completion of one year from the date of acceptance of the proposal. No such rule was brought to the notice of the State Commission and perhaps that is the reason why the State Commission confirmed the order passed by the District Forum with regard to the total sum assured in the policy. The circular orders dated 6.12.1996 issued by the Chief Post Master General, A.P. Circle have no application because they were issued on 6.12.1996 whereas the policy in respect of the present claim is taken on 23.9.1996. The circular orders which were in force by the date of issuing the policy have not been filed into the court but a copy of the policy is made available to this court. A perusal of the copy shows that in respect of non-medical policies if the death of the insured occurs within 1/2/3 years from the date of commencement of risk, then only 35%, 60%, 90% of the sum assured along with bonus accrued respectively shall be payable to the nominees or legal heirs if any.

It is not in dispute that both the parties are bound by the terms and conditions in the policy. Admittedly the insured died on 2.5.1997 whereas the policy was taken on 29.3.1996 i.e. one year after taking of the policy and the death took place within two years from the date of obtaining the policy. If that is so, as per the terms and conditions of the policy, the nominee is entitled for 60% of the sum assured along with the bonus accrued. Therefore, the petitioners are bound by the terms and conditions of the policy. As per the terms of the policy the nominee i.e. the respondent herein is entitled for 60% of the sum assured along with bonus accrued. This aspect of the case has been completely overlooked by the District Forum as well as the State Commission. Therefore, it is a clear error apparent on the face of the record in granting the total sum assured in pursuance of the policy issued by the 3rd petitioner herein under Rural Postal

Life Insurance Policy. Hence the respondent herein is entitled for 60% of the sum assured along with bonus accrued respectively together with interest thereon.

The terms and conditions of the policy are not denied or disputed by both the counsel appearing for the parties. Even according to the counsel for the petitioners who placed reliance on the proceedings of the Chief Post Master General dated 6.12.1996, the nominee is entitled for 60% of the sum assured along with bonus in case the death occurs before completion of two years but not before completion of one year from the date of acceptance of the policy. Since this part of the statement of fact is not denied or disputed and it is specifically pleaded in the petition "*the Hon'ble Commission was also shown the relevant provisions of the Rural Postal Life Insurance Policy wherein it has been very clearly laid down that if the policy is to be terminated by becoming a claim before the maturity date, then such claim shall be restricted to 60% of the sum assured along with accrued bonus for the death occurred before two years from the date of acceptance of the proposal. Accordingly in the instant case since the death has occurred within two years from the date of acceptance of the proposal, at best what can be granted could be only 60% of the policy amount*", the order under challenge can be modified instead of remitting back the matter to the A.P. State Consumer Redressal Commission.

Accordingly the impugned order is modified directing the petitioners-opposite parties to pay Rs.12,000/- (Rupees twelve thousand only) along with the bonus accrued thereon with interest at 12% per annum from 2.8.1997.

The writ petition is accordingly partly allowed. In the circumstances of the case, there shall be no order as to costs.

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B. Sudershan Reddy, J.

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K.C. Bhanu, J.

Date: 25--08—2004.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. Tippabothla Leelavathi W/o Ramakrishna
   R/o Munduru (V), Pedavegi Mandal, West Godavari District

2. 2CD copies